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No. _____

In The
Supreme Court of the United States
October Term, 1998

GARY L. BENEFIEL,

Petitioner,

v.

STATE OF IDAHO,

Respondent.

Petition for writ of Certiorati
To The United States Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Is it a violation of the 4th amendment of the United States Constitution for a law enforcement official who is outside his territorial jurisdiction and is therefore without authority to make traffic stops to detain a person for investigative purposes?

2. Are *Miranda* warnings required before administration of field sobriety tests if a traffic stop has ripened into an arrest?

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CITATIONS OF OFFICIAL REPORTS OF OPINIONS

State v. Benefiel, _____ Idaho _____ 953 P.2d 976 (1998)

PETITION FOR WRIT OF CERTIORARI

Gary Benefiel respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Idaho Supreme Court entered in this proceeding on February 24, 1998, in order to resolve the conflict between state courts of last resort on the important federal issues presented herein.

OPINIONS BELOW

The opinion of the Idaho Supreme Court which gives rise to this petition is published at 953 P.2d 976 (1988) and is resproduced in Appendix 4 hereto.

BASIS OF JURISDICTION

The Petitioner, Gary Benefiel, seeks review of the opinion entered by the Idaho Supreme Court on February 24, 1998. The matter was heard by the Idaho Supreme Court after the granting of a Petition for Review from the Idaho Court of Appeals opinion entered on March 18,

1997. Because May 25th is a national holiday, this petition is timely if postmarked by May 26, 1998.

This Court has jurisdiction to review this matter under Rules 10(b) and (c) of the Supreme Court Rules. The Idaho Supreme Court, as the state court of last resort, has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals, as well as deciding an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment of the Constitution of the United States of America provides as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches

> and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Article I, Section 17 of the Constitution of the State of Idaho provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit particularly describing the place to be searched and the person or things to be seized.

The Fifth Amendment to the Constitution of the United States of America reads as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled n any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due

process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

This case involves a Bureau of Indian Affairs police officer (Crowe), operating his patrol vehicle outside his jurisdiction, who observed Gary Benefiel commit a traffic infraction. Crowe radioed the Nez Perce County Sheriff's Office to report his observations. He then activated his overhead lights, forced the driver to pull off the road, seized his driver's license, and required him to submit to field sobriety tests. Following inconclusive results of the tests, Crowe retained Benefiel's driver's license and required Benefiel remain there until the Idaho State Patrolman arrived, approximately ten to twenty minutes later. Officer Rouse of the ISP, without giving the *Miranda* warning, required Benefiel to submit to field

sobriety tests, then charged Benefiel with driving under the influence.

The issues of whether the stop was a violation of Benefiel's rights under the 4th amendment of the United States Constitution and/or Article 1, Section 17 of the Idaho Constitution, and whether the evidence should be suppressed for failure to give *Miranda* warnings, were raised at that level through a Motion to Dismiss and/or Suppress. The magistrate court ruled that Crowe was acting as a private citizen, and that because private citizens may make an arrest, they may also stop and detain because that constitutes a lesser intrusion that an arrest. On the *Miranda* issue, the magistrate held that the warnings were not necessary because the stop did not ripen into an arrest under after Benefiel was actually placed under arrest by Rouse. See Memorandum Decision and Order dated February 8, 1997 at Appendix 1. On an interlocutory

appeal from the magistrate's ruling, the Second Judicial District Court in Nez Perce County, Idaho held that private citizens do not have the authority to conduct investigatory stops, and ordered all evidence to be suppressed. The district judge also found that the stop had ripened into an arrest by the time ISP Officer Rouse arrived, and that his failure to give the *Miranda* warnings rendered all evidence inadmissible. See Memorandum Decision and Order at Appendix 1. The State of Idaho appealed, and the case was assigned to the Idaho Court of Appeals. That court ruled on March 18, 1997 that Crowe did not have authority as a private citizen to make an investigatory stop and the stop was therefore illegal, but that the illegality did not amount to a constitutional violation because the officer was aware of specific articulable facts that warranted suspicion that Benefiel had committed or was about to commit a crime. The Court of Appeals viewed Crowe's

actions as an ordinary traffic stop, and held that the *Miranda* warning was not required . See 1997 Opinion No. 28 at Appendix 3.

The Idaho Supreme Court determined, without addressing the fact that Crowe was outside his jurisdiction, that Crowe was acting as a law enforcement officer and the evidence would not be suppressed because the officer had a reasonable suspicion to justify the investigatory stop. The opinion also held that Benefiel was not "in custody" until after his formal arrest, reversing the district court's order suppressing the evidence for failure to give the *Miranda* warning. See 1998 Opinion No. 12 at Appendix 4.

ARGUMENT

The Supreme Court should exercise its discretion and accept review of the Idaho Supreme Court decision in this case.

1. **The Idaho Supreme Court has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.**

A. **Unconstitutionality of the seizure**

The Idaho Supreme Court decision did not incorporate the factual findings below that because Crowe was outside his territorial jurisdiction, he had no authority to act as a police officer and must be considered to be nothing more than a private citizen. Rather, the court simply held that because Crowe was acting under of color of authority, he was "acting as a law enforcement officer." The Court held that there was no constitutional violation because Crowe had reasonable suspicion to stop Benefiel. In essence, the Idaho Supreme Court has ruled that police officers acting completely outside their jurisdiction have the authority to conduct investigatory stops with impunity as far as the evidence obtained is concerned.

This decision conflicts with the decisions of other state courts of last resort, which decisions were cited by the District Court Judge in her opinion (Appendix 2) as follows:

> officers acting extraterritorially but not in fresh pursuit may not utilize the limits the power of police to conduct investigations and gather evidence outside of their jurisdiction; where officers acting extraterritorially establish the basis for their private arrest by using incidents of their authority, e.g. badges and uniforms, the arrest is unlawful.

Minnesota v. Filipi, 297 N.W.2d 275, 278 (1980) citing *Collins v. Florida*, 143 So.2d 700 (Fla. App. 1962). Officers may not use the power of their office to gather evidence and ferret out criminal activity not otherwise observable. *Florida v. Phoenix*, 428 So.2d 262, 266 (Fla. App. 1982). In *Collins v. Florida*, 143 So.2d 700 (1962), the Florida Court of Appeals suppressed as invalid all evidence seized pursuant to an unlawful citizen's arrest by

officers acting under color of law.

In the present case, Crowe was driving a marked car and wearing full uniform and a badge. He employed his overhead lights to force Benefiel to stop, seized Benefiel's driver's license, and required Benefiel to perform field sobriety tests. Crowe was not acting as a private citizen, but rather was an officer outside his jurisdiction acting under the "color of office." Crowe violated Benefiel's constitutional rights when he used "indicia of authority" to effect the stop and then conduct an investigation which was clearly outside of his authority.

If allowed to stand, this decision will create a climate in which officers not only will be encouraged to disregard their territorial boundaries, they will be free to use color of office to obtain evidence, then claim that because they were really just acting as private citizens, the evidence they obtained is not subject to the constitutional

restrictions on unreasonable search and seizure. The decision that evidence need not be suppressed when it has been obtained during an investigatory stop by an officer without any authority to act means that there will be no reason for them to observe their jurisdictional boundaries. Rather than deterring extraterritorial conduct, this decision would encourage it.

B. **Failure to give *Miranda* warning.**

The district court ruling suppressing the evidence was based upon a factual determination that by the time ISP officer Rouse arrived at the scene, Crowe's initial stop of Benefiel had ripened into an arrest, raising the requirement that *Miranda* warnings be given. In reversing that decision, the Idaho Supreme Court has decided an important question of federal law in a way that conflicts with the decision of another state court of last resort.

Miranda warnings are required prior to a custodial interrogation. The United States Supreme Court equates custody with a person being"deprived of his freedom by the authorities in any significant way." *Miranda v. Arizona*, 384 U.S. 436, 555 (1966). Under Idaho precedent, this test has been refined to mean *Miranda* warnings are required when a person's freedom of action is "curtailed to a 'degree associated with formal arrest.'" *State v. Myers*, 118 Idaho 608, 610, 798 P.2d 453, 455 (Ct.App. 1990). The Idaho Supreme Court, in reaching its decision, looked to *Berkemer v. McCarthy*, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984). There, the U.S. Supreme Court held that responses to roadside questioning of a motorist, who was detained pursuant to a traffic stop for erratic driving, were admissible as evidence in his prosecution for DUI even though the motorist had not been given *Miranda* warnings previous to the questioning.

The Court said:

> [T]he usual traffic stop is more analogous to a so-called "*Terry* stop," see *Terry v. Ohio*, 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868 (1968), than to a formal arrest. Under the Fourth Amendment, we have held, a policeman who lacks probable cause but whose "observations lead him reasonably to suspect" that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to "investigate the circumstances that provoke suspicion." ... "The stop and inquiry must be 'reasonably related in scope to the justification for their initiation.'" ... Typically, this means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obliged to respond. And, unless the detainee's answers provide the officer with probable cause to arrest him, he must then be released. **The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that *Terry* stops are subject to the dictates of *Miranda*. The similarly noncoercive aspect of**

ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not "in custody" for the purposes of Miranda.

Berkemer, 468 U.S. at 439-40, 104 S.Ct. at 349-50.

As recognized in *Berkemer*, the determination of whether an interrogation is "custodial" is an objective one based on the surrounding circumstances. *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). The Idaho Supreme Court adopted the United States Supreme Court's test for determining if a suspect is in custody, holding that "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Myers*, 118 Idaho at 611, 798 P.2d at 456 (quoting *Berkemer*, 468 U.S. at 442). A determination of whether a defendant was in custody must be made by looking at the totality of all the circumstances. *Idaho v. Ybarra*, 102 Idaho at 578, 634 P.2d at 440 (citing *United States v.*

Mendenhall, 446 U.S. 544, 553 (1980).

The facts in the instant action supported the district court's conclusion that Benefiel's "detention" by Officer Crowe had ripened into an arrest by the time Officer Rouse arrived, questioned him, and required that he again submit to field sobriety tests. Crowe testified as follows:

1. He had pulled Benefiel over by activating the overhead lights on his marked patrol vehicle;

2. He took Benefiel's driver's license and never returned it;

3. He required Benefiel to answer questions and to perform field sobriety tests;

4. He told Benefiel to wait in his car;

5. In Crowe's opinion, Benefiel was not free to leave, and a reasonable person in Benefiel's position would not have felt that he was free to leave.

The State argued below that *Pennsylvania v. Muniz* held that field sobriety tests are nontestimonial. The *Muniz* court stated:

> ... to be testimonial, an accused's communication must itself, explicitly or implicitly, relate a factual assertion or disclose information. Only then is a
>
> person compelled to be a 'witness' against himself.

Id., 496 U.S. at 589, 110 S.Ct. at 2643. While the Court did observe that requiring a suspect to reveal the physical manner in which he articulates words is not protected by the Fifth Amendment, a closer reading of the *Muniz* case reveals the Court further held that responses to questions designed to support an inference of a confused mental state (in *Muniz*, asking the defendant the date of his sixth birthday) are testimonial.

The opinion by the Idaho Court in this case conflicts with the decision of another state court of last

resort. In *Allred v. Florida*, L 622 So.2d 984 (Fla.1993), the Supreme Court of Florida applied the *Muniz* holding to field sobriety tests consisting of counting and reciting the alphabet. The court held that a reasonable person would conclude that a request to recite, out of the ordinary sequence, numbers and letters was designed to lead to an incriminating response. The court went on to state:

> We find moreover that the petitioners were denied their Florida constitutional protection against self-incrimination. Failure to accurately recite the alphabet 'discloses information' beyond possible slurred speech; it is the content (incorrect recitation) of the speech that is being introduced, rather than merely the manner (slurring) of speech.

Id. at page 3. The *Allred* court further held that such recitations are not admissible under *Schmerber v. California*, 384 U.S. 757, 761, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966), in that the recitations are not "mere physical information:"

> We cannot agree that the information disclosed in the instant cases however is mere physical information. The content is incriminating evidence our of the suspect's own mouth. The incriminating inference is drawn from the testimonial act--answering the question incorrectly, not from physical evidence--slurred speech.

Id. at page 3.

Because the Idaho Supreme Court's opinion on this issue conflicts with that of the Florida Supreme Court, this Court should grant this Petition for Certiorari.

2. **The Idaho Supreme Court has decided an important federal question that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.**

The Idaho Supreme Court decision that the exclusionary rule does not require suppression of evidence obtained as a result of an investigatory stop by an officer outside his jurisdiction is probably not in accord with

applicable decisions of the United States Supreme Court.

The Court held that Crowe's stop of Benefiel cannot be viewed as the act of a private citizen, but then evaluated the constitutionality of the stop as if it were the act of a law enforcement officer (albeit one that exceeded his official authority). In spite of the finding by the lower courts that Crowe had no authority to act as a police officer and must be considered to be nothing more than a private citizen, the Idaho Supreme Court applied the standard for determining whether an investigative detention **by a law enforcement officer** is constitutional. The Court held that Crowe had reasonable suspicion to stop Benefiel, leading to the conclusion that the investigative stop of Benefiel was constitutionally sound and that the exclusion of the evidence is not appropriate.

This issue raises an important question of substance which has not yet been addressed by the

Supreme Court. There are strong policy considerations to prohibit an officer acting outside his territory from using color of office to obtain evidence, then relying on his status as an ordinary citizen to justify an arrest.

These considerations were recognized by the District Court Judge:

> Any other conclusion under the facts of this case could render the jurisdiction requirement a nullity. The risk of abuse of authority, as recognized by a sister jurisdiction, is that:
>
> > Taken to its logical extreme, as long as the officer's conduct can be accommodated within the scheme of a valid citizen's arrest, the officer need not be concerned that his extraterritorial conduct is unauthorized. *People v. Lahr*, 589 N.E.2d 539, 542 (Ill.1992).
>
> Adherence to territorial limits serves to identify that portion of the citizenry

> which the police must serve and to whom they must answer.

Appendix 2, page 11 - 12.

The underlying premise of the Idaho Supreme Court's decision is that a seizure made by an officer acting without authority may still be found to be **reasonable** under the Fourth Amendment. This conclusion is not in accord with the most basic premise of the Fourth Amendment to the United States Constitution - the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures.

Under Idaho law, an ordinary citizen is not authorized to make an investigatory stop. As the Idaho Court of Appeals noted in *Idaho v. Osborne*, 121 Idaho 520, 826 P.2d 481 (Ct. Appp. 1991), such stops are limited to police officers:

> **Police** may, in appropriate circumstances and in an appropriate manner, detain a

> person for the purpose of investigating possible criminal behavior even though there is no probable cause to make an arrest. *Terry v. Ohio*, 392 U.S. 1, 22, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889 (1968). For an investigatory stop or brief detention to be justified, **law enforcement officials** must be able to point to articulable and objective facts that the particular person being stopped or detained is suspected of criminal activity.

Osborne, 121 Idaho at 525 (emphasis added). Crowe did not fall within any statutory exception to the requirement that an officer act only within his jurisdiction, yet the Idaho Court treated him as a law enforcement officer for the purpose of determining whether his conduct violated Benefiel's constitutional rights.

The U.S. Supreme Court has held on many occasions that an investigatory stop may constitute a seizure within the meaning of the Fourth Amendment. *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 450

(1990); *United States v. Cortez*, 449 U.S. 411, 417 (1981); *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). The conclusion that this seizure does not violate Benefiel's rights under the constitution is contrary to United States Supreme Court cases which have held repeatedly that evidence seized during an unlawful search or seizure may not constitute proof against the victim of that activity. *Wong Sun v. United States*, 371 U.S. 471, 484 (1963). The exclusionary rule also prohibits the introduction of derivative evidence, both tangible and testimonial, that is the product of the primary evidence, or that is otherwise acquired as an indirect result of the unlawful search. *Murray v. United States*, 487 U.S. 533, 536-37 (1988). The exclusionary sanction applies to any "fruits" of a constitutional violation -- whether such evidence be tangible, physical material actually seized in an illegal search, items observed or words overheard in the course of

the unlawful activity, or confessions or statements of the accused obtained during an illegal arrest and detention. *United States v. Crews*, 445 U.S. 463, 470 (1980).

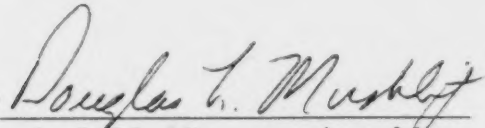
In this case all evidence of whether Benefiel was under the influence was acquired as a result of an investigatory stop by a person who had no authority whatsoever. This evidence was acquired strictly because of the prior illegality, and must be excluded as the fruit of that illegality. See *United States v. Hernandez*, 55 F.3d 443, 447 (9th Cir. 1995), where all evidence obtained as a result of a pretextual stop was held to be tainted and therefore suppressed.

CONCLUSION

Benefiel respectfully requests that his petition for certiorari by the Supreme Court be granted.

DATED this 22nd day of May, 1998.

CLARK and FEENEY

By 
Douglas L. Mushlitz, a member of the firm. Attorney for Defendant-Respondent

I hereby certify on the 26th
day of May, 1998, a true copy
of the foregoing instrument
was: X Mailed
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CLARK and FEENEY

By Douglas L. Murdaugh
Attorneys for Defendant-Respondent.

APPENDIX 1

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AN D FOR THE COUNTY OF NEZ PERCE

STATE OF IDAHO,	)	
	)	Case No. CR93-02014
Plaintiff,	)	
	)	
vs.	)	**MEMORANDUM DECISION**
	)	**AND ORDER**
GARY L. BENEFIEL,	)	
	)	
Defendant.	)	
	)	
	)	

This matter came before the court for hearing on January 7, 1994, pursuant to Defendant's Motion to Suppress and/or Dismiss. The defendant was present together with his attorney, Douglas L. Mushlitz, and the State was present and represented by Jamie C. Shropshire. At the conclusion of the hearing, the defendant raised issues involving the stop of his

vehicle and the field sobriety tests he was asked to perform. The Court took these issues under advisement. The State provided the Court with copies of cases it relied upon in closing arguments and Defendant filed a Memorandum in Support of Motion to Suppress and/or Dismiss. Specifically, Defendant has raised the issue of whether the Bureau of Indian Affairs officer had the authority to stop Defendant's vehicle. Defendant also argues that the initial stop by the B.I.A. officer cannot be justified as a citizen's arrest. Finally, Defendant has raised the issue of whether field sobriety tests requiring verbal responses are testimonial thereby requiring that Miranda warnings be given prior to such file sobriety tests being requested.

FINDINGS OF FACT

On October 2, 1993, Bureau of Indian Affairs Officer Crowe was traveling west bound on State Highway 12 transporting juveniles. He was driving a marked law enforcement vehicle with B.I.A. markings on the side and a light bar. He began

following a pickup and noticed that the cargo light of the pickup was on. Officer Crowe then followed the pickup for approximately five or six miles, during which time he observed it cross over the center line and the fog line several times. He then contacted the Nez Perce County Sheriff's Office by radio and reported his observations regarding the pickup. He continued following the pickup and testified that the driving he observed became more erratic and at one point observed it with it tires on the solid yellow line on a curve. He decided to pull the pickup over near the Myrtle Store because he was afraid it would hit another vehicle.

Officer Crowe, wearing his law enforcement uniform and badge, made contact with the driver of the pickup, Defendant Benefiel. Officer Crowe advised the defendant why he had stopped him and asked him if he had been drinking. Defendant Benefiel answered that he had had a few drinks. Officer Crowe smelled alcohol coming from Defendant's pickup. Officer Crowe requested the defendant to perform one field sobriety test

twice. In Crowe's opinion the defendant failed the test both times. He then told the defendant to wait in his pickup. Officer Crowe kept the defendant's driver's license in his possession and testified that the defendant was not free to leave at that time. Idaho State Police Officer Rouse arrived on the scene within a few minutes of the stop. After advising Officer Rouse as to his observations of the defendant, Officer Crowe left the scene.

As a Bureau of Indian Affairs officer, Officer Crowe enforces tribal and federal laws. He has had some training from P.O.S.T. but does not enforce D.U.I. laws on the reservation. When he stopped the defendant's pickup, it was not at the request of the Idaho State Police or the Nez Perce county Sheriff. There was no testimony that any of these events occurred on the Nez Perce Indian Reservation.

Idaho State Police Officer Rouse overheard Officer Crowe's radio call and responded to the Myrtle Store. It took him approximately ten minutes from the time of the call to get

there. After speaking briefly with Officer Crowe, he made contact with the defendant. He asked Defendant whether he had been drinking and received an affirmative response. He than asked Defendant to perform five separate field sobriety tests; the horizontal gaze nystagmus, the walk and turn, the one leg stand, reciting the alphabet and counting backwards from 100 to 75. In Officer Rouse's opinion the defendant failed several of the field sobriety tests. Officer Rouse then placed the defendant under arrest, taking into consideration Officer Crowe's observations of the Defendant's driving pattern and the defendant's performance of the field sobriety tests. At no time did Officer Rouse advise the defendant of his Miranda rights.

CONCLUSIONS OF LAW

The first issue the defendant has raised is whether Bureau of Indian Affairs Officer Crowe had authority to stop and detain him. Certainly, a seizure did occur when Officer Crowe stopped the defendant. An individual is seized within the meaning

of the Fourth Amendment when taking into account all of the circumstances surrounding the encounter the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business. *State v. Osborne,* 121 Idaho 520 (App.) 1991. Officer Crowe testified that Defendant was not free to leave.

There was no testimony that the stop occurred on the Nez Perce Indian Reservation so Officer Crowe was acting outside his territorial jurisdiction. He was not responding to a request for law enforcement assistance from the chief law enforcement officer of another city or political subdivision or his designee so did not have extraterritorial authority pursuant to Section 67-2337, Idaho Code. Nor does Officer Crowe meet the definition of a peace officer as defined in Section 19-510, Idaho Code. He is not "a sheriff of a county, or a constable, marshal, or policeman of a city or town." The term "Peace Officer" is further defined in Section 19-5101(d) Idaho Code as follows:

> (d) "Peace Officer" means any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and deterrence of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace Officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the State of Idaho.

Officer Crowe does not fall within this definition of a peace officer either. Though he is an employee of a law enforcement agency of a federally recognized Indian Tribe, he has not completed the peace officer standards and training academy and had not been

deputized by a sheriff of a county or a chief of police of a city of the State of Idaho.

The question then becomes whether Officer Crowe, by virtue of the fact that he did not have extraterritorial authority pursuant to Section 67-2337, Idaho Code or was not within the definition of a peace officer, had the authority to stop and detain the defendant. This issue is addressed in *State v. Griffiths*, 113 Idaho 364 (1987). In *Griffiths*, two Chubbuck city police officers responded to the Fort Hall Indian Reservation and arrested a non-Indian driver for D.U.I. who had been stopped by Indian police officers. The officers were clearly outside of their jurisdictional authority. The court found that, though the officers were without extraterritorial authority pursuant to Idaho Code Section 67-2337, they could exercise arrest authority as would a private citizen. The court made reference to the "general rule that where a police officer makes an arrest in another law enforcement agency's jurisdiction without that agency's consent, the validity of

the arrest is determined by whether the police officer, if a private person, could have arrested the individual. See, generally, 5 Am Jur. 2d *Arrest* § 50 at 742 (1962)."

Based on the reasoning of *Griffiths*, if follows that Officer Crowe had private citizen arrest authority at the time he stopped the defendant. The fact that he was a tribal officer outside of his jurisdiction at the time he stopped the defendant, rather than a peace officer outside of his jurisdiction as in *Griffiths*, should not reduce him to less arrest authority than that held by a private citizen under Idaho Code Section 19-604.

The next question then is whether Officer Crow, having private citizen arrest authority, had the authority to stop and detain Defendant Benefiel. Idaho Code Section 19-604 sets forth instances when a private citizen may arrest:

> When a private person may arrest. - A private person may arrest another:

> 1. For a public offense committed or attempted in his presence.
>
> 2. When a person arrested has committed a felony though not in his presence.
>
> 3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Under Idaho Code Section 19-604(1.), a private citizen would have the authority to arrest someone for D.U.I. if the offense were committed in his presence. It follows then that Officer Crowe would have that same authority.

Given Officer Crowe's citizen arrest authority for a D.U.I. committed in his presence, he also had the authority to make the lesser intrusion of stopping and detaining the defendant. Defendant has argued that private citizen arrest authority does not include the authority to make investigatory stops; that the authority to make investigatory stops extends only to law enforcement.

However, an investigatory stop is a more limited intrusion than an arrest. It does not make sense to allow an intrusive measure such as an arrest and yet, prohibit the lesser intrusion of a stop and detention. Further, investigatory stops are more accurately described as a limitation on police power rather than a grant of authority. The Fourth Amendment requires that before a police officer can detain a private citizen, he must be able to point to articulable and objective facts that the particular person being stopped or detained is suspected of criminal activity. *State v. Osborne*, 121 Idaho 520 (1991). The Fourth Amendment is a protection against governmental intrusions upon private citizens.

Courts do apply Fourth Amendment standards to police officers making extraterritorial arrests. *Griffiths*, supra. Therefore, Officer Crowe is required to point to articulable and objective facts that the defendant was suspected of criminal activity. The observations made by Officer Crowe of Defendant's vehicle crossing over the centerline and the fog line on several occasions

and riding the solid yellow line on a curve, were certainly enough to lead Crowe to suspect that Defendant was possibly D.U.I. or driving in a inattentive fashion. As Officer Crowe testified he observed Defendant's vehicle cross the centerline and fog line several times and became fearful that it would collide with another vehicle. "Police may, in appropriate circumstances, and in an appropriate manner, detain a person for the purpose of investigating possible criminal behavior even though there is no probable cause to made an arrest. *Terry v. Ohio*, 393 U.S. 1, 22, 88 S.Ct. 1868, 20 L.Ed. 2d 889. (1968)." *Osborne, supra.* Also, Officer Crowe did observe the Defendant commit traffic infractions. Although neither police officers or citizens can arrest for civil infractions, citizens do have the authority to sign as complainants on infraction citations and an infraction is defined as "a civil public offense, not constituting a crime" under Idaho Code Section 18-111.

The last issue raised is whether those field sobriety tests administered by Officer Rouse which required verbal responses must be suppressed because no Miranda warnings had been given to the defendant. The United State Supreme Court discussed this issue in *Berkemer v. McCarty*, 468 U.S. 420, 82 L.Ed. 2d 317, 104 S.Ct. 3138 (1984). In *Berkemer*, a police officer observed a car weaving in and out of its own lane. The officer stopped the car and after observing the driver have difficulty standing, decided he would take the driver into custody. The officer asked a few questions, requested the driver to perform field sobriety tests and then arrested him. The Supreme Court held that the initial stop of the driver did not render him in custody. The roadside stop was relatively brief, and conducted in public. The driver was in custody for purposes of Miranda only after the officer formally arrested him. This was in spite of the fact that the officer had decided to arrest the driver right after he stepped from his car. Applying the reasoning of *Berkemer* to the case at hand, Defendant

Benefiel was in custody for purposes of Miranda only after he was formally placed under arrest at the scene of the stop by Officer Rouse. Because the field sobriety tests were administered prior to that time, Miranda warnings were not required.

Defendant has argued that under *Pennsylvania v. Muniz*, 496 U.S. 582, 110 L.Ed. 2d 528, 110 S.Ct. 2638 (1990), to the extent field sobriety tests administered by Officer Rouse elicited incriminating evidence in the form of verbal responses, they must be suppressed. However, *Muniz* is distinguishable from this case in that the driver in *Muniz* had been placed under arrest and transported to a booking center where he was again asked to perform field sobriety tests. The focus in *Muniz* was on the field sobriety tests conducted at the booking center, after a formal arrest rather than those performed at the stop. The rationale of *Muniz* would apply to testimonial responses made by Defendant Benefiel to questions or during field sobriety tests taking place subsequent to his formal arrest and prior to Miranda warnings being given.

ORDER

NOW, THEREFORE, based upon the foregoing Memorandum Decision, this Court hereby denies Defendant's Motion to Suppress and/or Dismiss.

DATED this 8th day of February, 1994.

_____

Carl B. Kerrick - Judge

Appendix 2

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

THE STATE OF IDAHO,	)	
	)	Case No. CR 93-02014
Plaintiff-Respondent,	)	
	)	
vs.	)	MEMORANDUM OPINION
	)	AND ORDER
GARY L. BENEFIEL,	)	
	)	
Defendant-Appellant.	)	
	)	
	)	

This Court heard appellate argument of the parties, with Appellant, Gary Benefiel, being represented by his attorney Douglas L. Mushlitz of Clark & Feeney. Respondent, State of Idaho, was represented by Nez Perce County Deputy Prosecuting Attorney Jon Hally. Upon consideration of the briefs and arguments of the parties, this Court hereby issues its Memorandum Opinion and Order.

FACTS

This case presents previously decided issues, as well as issues of first impression. The facts as stated by the trial court can be summarized as follows:

> On October 2, 1993, Bureau of Indian Affairs Officer Crowe was traveling outside of his jurisdiction in a marked law enforcement vehicle with B.I.A. markings on the side and a light bar. Crowe began to follow a pickup after noticing that the cargo light of the pickup was on. He then followed the pickup for approximately five or six miles, during which time he observed the car cross over the center line and the fog line several times. He contacted the Nez Perce County Sheriff's Office by radio to report his observations. He continued to follow the vehicle and finally pulled it over for fear that it would hit another vehicle. Crowe did not stop the pickup at the request of the Idaho State Police or Nez Perce County Sheriff.
>
> Crowe, wearing his law enforcement uniform and badge, made contact with the driver of pickup, Defendant Benefiel. Officer Crowe advised Benefiel of the reason for the stop, took his driver's license and questioned him. Benefiel responded that he had been drinking. After smelling alcohol coming from Benefiel's pickup he requested that Benefiel perform one field sobriety test twice. In Crowe's opinion Benefiel failed the test both times. Crowe kept Benefiel's driver's license and testified that Benefiel was not free to leave at that time. Idaho State Police Officer Rouse arrived on the scene within a few minutes of the stop. After advising Rouse as to his observations, Crowe left the scene.

> Rouse questioned Benefiel as to whether he had been drinking and received an affirmative response. He then asked Benefiel to perform five separate field sobriety tests. After concluding that Benefiel had failed several of the tests, and taking Crowe's observations into account, Rouse placed Benefiel under arrest. At no time did Rouse advise Benefiel of his *Miranda* rights.

The trial court concluded that Crowe acted extraterritorial although not at the request of law enforcement under I.C. § 67-2337. It then found that, based upon the reasoning of *Griffiths v. State*, 113 Idaho 362, 744 P.2d 92 (1987), Crowe acted as a private citizen under I.C. § 19-604, and therefore had authority to perform a citizen's arrest. The court further held that the investigatory stop was impliedly authorized under the citizen's arrest statute because a stop is a more limited intrusion than a full-scale arrest. The trial court, finally, held that Benefiel was "in custody" for *Miranda* purposes only after he was **formally** placed under arrest at the scene of the stop by Rouse. Because the field sobriety tests were administered prior to that time, *Miranda* warnings were deemed unnecessary.

ISSUES ON APPEAL

A. DID OFFICER CROWE, ACTING EXTRATERRITORIAL, HAVE PRIVATE CITIZEN'S ARREST AUTHORITY TO STOP AND DETAIN THE DEFENDANT?

B. WERE THE FIELD SOBRIETY TESTS CONDUCTED BY OFFICER ROUSE PERFORMED IN VIOLATION OF THE DEFENDANT'S *MIRANDA* RIGHTS?

STANDARD OF REVIEW

A district court acting in its appellate capacity must review the decision of the trial court using the same standards and in the same manner as the Supreme Court reviews a decision of a district court. I.R.C.P.83(u). The district court must defer to the magistrate's findings of fact where they are supported by substantial evidence. *State v. Thomas*, 116 Idaho 848, 850, 780 P.2d 599 (Ct.App. 1989). As to questions of law, the district court exercises free review. *Id.*; *State v. O'Neill*, 118 Idaho 244, 245, 769 P.2d 121 (1990).

DISCUSSION

A. DID OFFICER CROWE, ACTING EXTRATERRITORIAL, HAVE PRIVATE CITIZEN'S ARREST AUTHORITY TO STOP AND DETAIN THE DEFENDANT?

The parties do not dispute that Crowe acted outside the area of his jurisdiction or that his actions did not arise from requests of law enforcement authorities having jurisdiction. The State asserts that Crowe simply made a citizen's arrest. Benefiel counters that the citizen's arrest statute, I.C. § 19-604, precluded Crowe from making investigatory stops as legitimized in *Terry v. Ohio*, 392 U.S. 1, 20 L.Ed.2d 889 (1968). He argues that at most Crowe witnessed the commission of an infraction (crossing the center line) which is not a "public offense" under the statute.

Did Crowe witness a "public offense"?

This Court must first determine whether Crowe witnessed a "public offense." A citizen has statutory power to arrest when misdemeanors are committed in her presence. *Sima v. Skaggs Payless Drug Center, Inc.*, 82 Idaho 387, 353 P.2d 1085 (1960). It would be anomalous to conclude that misdemeanors are not

public offenses under § 19-604. Indeed, driving while under the influence is treated not only as a public offense, but as a felony for arrest purposes under I.C. § 49-1109(a)(2). *Griffiths, supra,* 113 Idaho at 369.

In *Griffiths,* officers acting extraterritorial were contacted by two BIA officers (also outside of their jurisdiction) after the BIA officers stopped Griffiths for driving erratically (crossing the fog line twice and center line once) and driving 70 m.p.h. in a 40 m.p.h. speed zone. 113 Idaho at 365. The Court held that officers may arrest a person for driving while under the influence under the citizen's arrest statute because that act constitutes a "public offense."[1] Based upon *Griffiths* and because he was a private

---

[1]Under I.C. §19-1501 traffic infractions may be issued only by peace officers or authorized employees of the Idaho Transportation Department. Benefiel asserts that Crowe was not a peace officer as defined in the Code because he was not fully P.O.S.T. certified. *See* I.C. § 19-1501(d). It cannot be argued that Crowe violated § 19-1501, however, because he did not issue a citation and the record reveals that he had enough facts with which to form a reasonable and articulable suspicion that Benefiel was driving while under the influence.

citizen, Crowe, after witnessing a public offense, had authority to arrest Benefiel.

Could Crowe, as a private citizen, detain Benefiel for investigative purposes?

The State argues that the citizen's arrest authority includes the authority to make an investigatory stop because it constitutes a lesser intrusion upon privacy than an arrest. This Court disagrees. Idaho Code § 19-604 provides:

> A private person may arrest another ...[f]or a public offense committed or attempted in his presence.

This language requires that the offense be complete before private individuals may act; it does not give non-police personnel authority to stop citizens to determine if a public offense has been or it about to be committed. The statute presumes that investigation is unnecessary.

This Court acknowledges the *Griffiths* holding that police officers also have common law rights to make citizen's arrests. *Griffiths* involved a request from one police agency to another in making an arrest. The defendant argued that the officer providing

the assistance ceased to be a "police officer" because he was acting outside the territorial limits of his jurisdiction. *Griffiths* did not address the issue of investigatory stops. This Court could find no Idaho cases dealing with this issue. In other jurisdictions, however, the rule appears to be that officers acting extraterritorial but not in fresh pursuit may not utilize the power of their office to gather evidence and ferret out criminal activity not otherwise observable. *State v. Phoenix*, 428 So.2d 262, 266 (Fla.App. 1982). This "color of office" doctrine limits the power of police to conduct investigations and gather evidence outside of their jurisdiction. Distinguishing between arrest and investigation, one court explained:

> The arrest was upheld as a citizen's arrest because the police did not establish the basis for the private arrest by using incidents of their authority, rather the appearance of police authority entered the picture only after a valid basis for the arrest had been established.

State v. Filipi, 297 N.W.2d 278 (Minn.1980).

In other states, courts considering cases where there was no overt display of police authority reject the concept that a private

citizen has the authority to make a *Terry* stop. In *People v. Fenton*, 154 Ill.App.3d 152, 506 N.E.2d 979, 981 (1987), the Court held:

> Non-custodial inquires, or *Terry* stops, have been viewed solely as a police function. It cannot be forgotten that when *Terry v. Ohio* ... was first decided, a major factor in the Court's determination was the weight given the officer's prior experience in his profession. Private citizens do not possess that same expertise and ability to detect criminal activity, nor do we believe that the privilege extended to police officers under *Terry* should be passed on to the public-at-large.

A like conclusion was reached in *Garner v. State*, 779 S.W.2d 498 (Tex.App. 1989):

> The state has not cited any case which authorizes a private citizen to conduct an investigatory stop based only on an articulable suspicion. We hold that a private citizen must have probably cause to believe that a crime is being committed in order to justify an arrest or detention **and a private citizen does not have the authority to make a *Terry* stop.**

779 S.W.2d at 501 (emphasis added). The Missouri appellate court held:

> No authority can be found granting private citizens the privilege to stop and detain persons believed to have committed ordinance violations or traffic offenses, and the wisdom of recognizing such a privilege is seriously doubted. Delegating to private citizens the authority to investigate and

> arrest for such offense would invite more breaches of the peace than the number hoped to be prevented.

State v. Devlin, 745 S.W.2d 850, 852 (Mo.App.1988).

In the present case, Crowe was drove a marked car, in full uniform and wore a badge. He employed his overhead lights to force Benefiel to stop, seized Benefiel's driver's license and required Benefiel to perform sobriety tests. These acts taken together establish that Crowe was not acting as a private citizen, but rather under the "color of office".

According to Crowe's testimony the purpose for the stop was to ensure the safety of other vehicles, not to arrest Benefiel for driving while under the influence. Only after questioning Benefiel and requiring that he perform field sobriety tests did Crowe establish the basis for an arrest. This Court concludes that Crowe used "indicia" of his authority, conducted an investigation and acted outside of his authority.

Strong policy considerations also support this conclusion. Any other conclusion under the facts of this case could render the jurisdictional requirement a nullity. The risk of abuse of authority,

as recognized by a sister jurisdiction, is that:

> Taken to its logical extreme as long as the officer's conduct can be accommodated within the scheme of a valid citizen's arrest, the officer need not be concerned that his extraterritorial conduct is unauthorized.

People v. Lahr, 589 N.E.2d 539, 542 (Ill. 1992). Adherence to territorial limits serves to identify that portion of the citizenry which the police must serve and to whom they must answer. More profoundly, permitting a citizen's version of non-custodial inquiry could lead to the kind of arbitrary, capricious and dangerous acts *Terry* was intended to deter. Apart from enforcement problems, due to the lack of police training of private persons, this court has little difficulty envisioning incidence of pretexual stops or even *bona fide* citizen stops being met with violent resistance.

This Court holds that officers acting outside of their jurisdictions may arrest for public offenses including traffic offenses committed in their presence. When such officers unlawfully assert official authority to gain access to evidence, however, that evidence must be suppressed. While Crowe had

authority as a private citizen to stop and arrest Benefiel, he was without authority to perform any investigation and since he was outside of his jurisdiction he was precluded from using any indicia of authority to validate his unlawful conduct.

B. WERE THE FIELD SOBRIETY TESTS CONDUCTED BY OFFICER ROUSE PERFORMED IN VIOLATION OF THE DEFENDANT'S *MIRANDA* RIGHTS?

Benefiel argues that Officer Rouse was required to read him his *Miranda* rights prior to requesting that her perform field sobriety tests. The trial court relied on *Berkemer v. McCarty*, 468 U.S. 420, 82 L.Ed.2d 317 (1984), in which the Court held that roadside questioning of a motorist detained pursuant to a traffic stop did not violate *Miranda*:

> It must be acknowledged at the outset that a traffic stop significantly curtails the "freedom of action" of the driver ...in the detained vehicle ... Two features of an ordinary traffic stop mitigate the danger that a person questioned will be induced "to speak where he would not otherwise do so freely." First, detention of a motorist pursuant to a traffic stop is presumptively temporary and brief. ... Second, circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police. ...

> In both of these respects, the usual traffic stop is more analogous to a so-called Terry stop, than to a formal arrest. ... The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that Terry stops are subject to the dictates of Miranda. The similarly noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not "in custody" for the purposes of Miranda. [Citations omitted.]

The Idaho Court of Appeals applied *Berkemer* in traffic stop context in *State v. Jones*, 115 Idaho 1029, 772 P.2d 236 (Ct. App. 1989). The Court of Appeals held that Jones "was neither in custody nor significantly deprived of his freedom when, as in *Berkemer* ... he was asked by the officer about having consumed alcohol and to give other verbal responses to the officer's field sobriety tests, such as counting by numbers and repeating the alphabet." 115 Idaho at 1033. However, the *Jones* Court also commented that "there [was] no suggestion that the officer's investigations exceeded reasonable bounds of time or intensity." *Id.*

In contrast, the Court of Appeals in a later case limited *Berkemer* to what the Court called "ordinary or routine traffic stops":

> [T]he language in *Berkemer* suggest that the Court's holding applies only to "ordinary" and "routine" traffic stops. ... [W]e hold that Myers was in "custody" for purposes of *Miranda* warnings. The judge's finding that this was a non-routine traffic stop is well supported by the record. ... The only relevant inquiry is whether a reasonable man in Myers' position would believe that he was deprived of his freedom of movement in a significant way. We believe that a reasonable man in Myers' position could conclude that such excessive "police domination" deprived him of his freedom of movement in a significant way.

118 Idaho 610-611. The undisputed facts in this case reveal that Benefiel, at the time of Officer Rouse's arrival, had already been subjected to and failed sobriety test, had his driver's license seized and was, by Crowe's own testimony, not free to leave. This translates to Benefiel's being "in custody" for purposes of *Miranda*. The stop had ripened into an arrest and therefore Rouse was required to give Benefiel *Miranda* warnings prior to requiring that he answer any more questions or submit to further field sobriety tests. Thus even assuming that under some interpretation

the stop by Crowe is validated, the evidence must nonetheless be suppressed because of the failure to provide Miranda warnings.

ORDER

The decision of the trial court denying the defendant's motion to suppress evidence is REVERSED. The case is hereby REMANDED to the trial court for further proceedings consistent with this opinion.

DATED this 15th day of February, 1995.

_____

Ida Rudolph Leggett - District Judge

Appendix 4

IN THE SUPREME COURT OF THE STATE OF IDAHO
Docket No. 23911

STATE OF IDAHO,	)	
	)	1998 Opinion No. 12
Plaintiff-Appellant,	)	
	)	Lewiston, October, 1997 Term
	)	
v.	)	Filed: February 24, 1998
	)	
GARY L. BENEFIEL,	)	Frederick C. Lyon, Clerk
	)	
Defendant-Respondent.	)	
	)	

Appeal from the District Court of the Second Judicial District of the State of Idaho, Nez Perce County. Hon. Carl B. Kerrick, Magistrate Judge. Hon. Ida R. Leggett, District Judge.

Appeal from a magistrate judge's order denying respondent's motion to suppress evidence. Affirmed.

Hon. Alan G. Lance, Attorney General; Catherine O. Derden, Deputy Attorney General, Boise, for appellant. Catherine O. Derden argued.

Clark and Feeney, Lewiston, for respondent. Douglas L. Mushlitz argued.

TROUT, Chief Justice.

This is an appeal from a magistrate judge's order denying respondent, Gary L. Benefiel's motion to suppress evidence. We affirm the magistrate judge's determination.

I.
BACKGROUND

On October 2, 1993, Bureau of Indian Affairs Officer Crowe (Crowe) was driving on a state highway in Nez Perce County when he observed a pickup traveling ahead of him. At the time of these observations, Crowe was in a marked law enforcement vehicle on official business, although he was off the tribal reservation over which he exercised jurisdiction. His attention was drawn to the vehicle, later determined to be driven by respondent Gary L. Benefiel (Benefiel), when it crossed the center line and the fog line of the road several times. Because of concerns about the vehicle's driving pattern, Crowe contacted the Nez Perce County Sheriff's Office by radio and reported his observations. Crowe continued to follow the pickup and eventually pulled Benefiel over as his driving became more erratic. In stopping the pickup, Crowe was not acting at the request of either the Idaho State Police or the Nez Perce County Sheriff.

Crowe used the overhead lights on his vehicle to effectuate the stop, and was wearing his law enforcement uniform and badge

when he approached the pickup. Crowe asked Benefiel whether he had been drinking to which Benefiel responded that he had had a few drinks. Crowe noticed the odor of alcohol coming from the pickup and asked Benefiel to perform a field sobriety test. Crowe concluded that Benefiel had failed the test and asked him to remain in his pickup while they awaited the arrival of an Idaho State Police officer (the ISP officer). Crowe held Benefiel's driver's license while they waited.

Within approximately ten minutes of the initial stop by Crowe, the ISP officer arrived at the scene. After Crowe advised the ISP officer of his observations of Benefiel, Crowe left the scene. The ISP officer asked Benefiel whether he had been drinking and Benefiel replied that he had. The ISP officer then asked Benefiel to perform several field sobriety tests. The ISP officer concluded that Benefiel had failed several of the tests and, thus, he placed Benefiel under arrest for driving under the influence. The ISP officer informed Benefiel of his *Miranda* rights at the time of the arrest.

II.
PROCEDURAL HISTORY

After Benefiel was charged with driving under the influence, he filed a motion to dismiss and to suppress all evidence obtained by the police. In support of his motion, Benefiel argued that Crowe had no basis for stopping and detaining him and, thus, any such arrest was illegal. He also alleged that any evidence gathered as a result of the illegal arrest should be suppressed. Furthermore, Benefiel argued that the evidence obtained by the ISP officer must be suppressed on the basis that he was effectively in custody and was not advised of his *Miranda* rights. The magistrate judge denied Benefiel's motion.

Benefiel obtained permission to appeal this interlocutory order to the district court. The district court reversed the magistrate judge's order and remanded the case to the trial court. The State of Idaho then filed a notice of appeal. The appeal was assigned to the Court of Appeals which reversed the district court's decision and affirmed the magistrate judge's ruling.

Benefiel filed a petition for review by this Court, which was granted.

III.
THE MAGISTRATE JUDGE DID NOT ERR IN DENYING THE RESPONDENT'S MOTION TO DISMISS THE CASE AND SUPPRESS THE EVIDENCE.

A. Standard of Review

When considering a case on review from the Court of Appeals, this Court gives serious consideration to the views of the Court of Appeals; however, this Court reviews the trial court's decision directly. *State v. Avelar*, 129 Idaho 700, 702, 931 P.2d 1218, 1220 (1997). In other words, this Court is not merely reviewing the correctness of the Court of Appeal's decision; rather, this Court is hearing the matter as if the case were on direct appeal from the magistrate judge's decision. *State v. Weaver*, 127 Idaho 288, 290, 900 P.2d 196, 198 (1995)(citing *Valley Bank v. Stecklein*, 124 Idaho 694, 696, 864 P.2d 140, 142 (1993)).

When reviewing a trial court's ruling on a defendant's motion to suppress evidence, this Court will defer to the trial

court's factual findings unless they are clearly erroneous. *State v. Headley*, 130 Idaho 339, 341, 941 P.2d 311, 313 (1997) (citing *State v. Medley*, 127 Idaho 182, 185, 898 P.2d 1093, 1096 (1995)). However, the Court exercises free review over whether, based upon the trial court's findings, the evidence should have been suppressed. *Id.* (Citing *State v. Connor*, 124 Idaho 547, 548, 861 P.2d 1212, 1213 (1993)).

B. Investigatory Stop

In determining whether the evidence obtained by Crowe during the investigatory stop of Benefiel should be suppressed, both the State of Idaho and Benefiel discuss I.C. § 19-604, entitled "When Private Person May Arrest." Because Crowe was acting outside of his jurisdiction at the time of the stop, the parties have discussed whether a citizen's arrest statute provides some authority for Crowe's actions. The State of Idaho argues that a citizen's authority to arrest under I.C. § 19-604 necessarily includes, in addition, the authority to conduct an investigatory stop because such a stop is less intrusive than an arrest. Benefiel contends that

a private citizen lacks the authority to conduct an investigatory stop of another individual. We find that I.C. § 19-604 is irrelevant to a determination of whether the evidence obtained by Crowe during the investigatory stop should be suppressed. First, I.C. § 19-604 concerns a private citizen's authority. Crowe was not acting as a private citizen when he stopped Benefiel; rather, he was acting as a law enforcement officer. Crowe was on duty at the time of the stop and was dressed in his law enforcement uniform and badge. In addition, he was driving a marked law enforcement vehicle with an overhead light bar, and indeed, used his overhead lights to effectuate the stop of Benefiel. Second, I.C. § 19-604 concerns the authority to arrest. Crowe did not arrest, or even intend to arrest, Benefiel; rather, he was making an investigatory stop. We conclude that Crowe was acting as a law enforcement officer when he conducted an investigatory stop of Benefiel, and therefore, an analysis of the citizen's arrest statue is inappropriate.

Because Crowe was acting as a law enforcement officer when he stopped Benefiel, the evidence obtained by Crowe during

the stop should be suppressed if Crowe violated Benefiel's Fourth Amendment rights. Not every seizure of a person needs to be justified by probable cause to arrest for a crime; an officer may detain a person for the purpose of investigating possible criminal behavior even though there is no probable cause to make an arrest. *State v. Rawlings*, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992)(citing *Terry v. Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889 (1968)). However, the police officer must have a reasonable suspicion, based on the totality of the circumstances, that the person stopped has committed or is about to commit a crime. *Id.* (citations omitted). In other words, the officer must be aware of specific articulable facts, together with rational inferences therefrom, that warrant suspicion that the person stopped has committed or is about to commit a crime. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884, 95 S. Ct. 2574, 2580, 45 L. Ed. 2d 607 (1975).

The facts of this case are substantially similar to those in *State v. Atkinson*, 128 Idaho 559, 916 P.2d 1284 (Ct. App. 1996).

In *Atkinson*, the Court of Appeals held that an officer had reasonable suspicion to conduct an investigatory stop in order to determine whether an individual was driving while intoxicated where the individual's vehicle swerved across the lane of traffic and touched the fog line. *Id.* At 561, 916 P.2d at 1286. In this case, based upon his observations of Benefiel's erratic driving, Crowe was able to articulate a basis for a reasonable suspicion justifying an investigatory stop of Benefiel's vehicle. His observations thereafter of the odor in Benefiel's car, as well as Benefiel's admissions about drinking, justified Crowe's continued detention of Benefiel until the ISP officer arrived. Therefore, we conclude that Crowe's investigatory stop did not result in a violation of Benefiel's constitutional rights and we affirm the magistrate judge's order denying Benefiel's motion to dismiss the case and suppress the evidence obtained during the stop.

C. *Miranda* Warnings

Benefiel asserts that he was in custody for the purpose of *Miranda* when the ISP officer questioned him and administered the

field sobriety tests. Because the ISP office did not administer *Miranda* warnings at that time, Benefiel claims the evidence obtained by the ISP officer must be suppressed. The State of Idaho argues that the ISP officer effected an ordinary traffic stop, which does not rise to the level of "custodial interrogation."

A person temporarily detained pursuant to an ordinary traffic stop is not in custody for the purpose of *Miranda*. *Berkemer v. McCarty*, 468 U.S. 420, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984). Benefiel's vehicle was stopped by law enforcement officers in order to investigate whether Benefiel was driving while intoxicated. The ISP officer detained Benefiel for the sole purpose of conducting field sobriety tests. When Benefiel was arrested, thereby placing him in custody, Benefiel was administered his *Miranda* warnings. We agree with the magistrate judge that Benefiel was not in custody for the purpose of *Miranda* prior to the time of his arrest and because he was not in custody, there was no need to administer *Miranda* warnings. Thus, we hold that the magistrate judge did not err in denying Benefiel's motion to

suppress the evidence obtained by the ISP officer during the traffic stop prior to Benefiel's arrest.

IV.
CONCLUSION

For the foregoing reasons, we affirm the magistrate judge's decision denying Benefiel's motion to dismiss and suppress. This case is remanded to the trial court for further proceedings.

Justices JOHNSON, SILAK and Judge Pro Tem CAREY, **CONCUR**; Justice SCHROEDER, **SPECIALLY CONCURRING.**

I concur in the determination that the investigatory stop did not violate Benefiel's constitutional rights and, therefore, the evidence obtained may not be suppressed under the exclusionary rule. I write separately to explain more fully the basis of my concurrence.

The exclusionary rule precludes the use of evidence that was obtained in violation of a defendant's right under the Fourth Amendment to the U.S. Constitution or under art. I § 17 of the

Idaho Constitution. *State v. Arregui*, 44 Idaho 43, 254 P. 788 (1927). The purpose of the exclusionary rule is to prevent a violation of the constitutional guarantees against unreasonable search and seizure. *Id.* The doctrine was not created to exclude evidence that was obtained as the result of an officer's illegal action that did not violate a constitutional guarantee when there are other adequate deterrents to the police misconduct.

In this case the officer's actions were illegal, but they did not result in a violation of Benefiel's constitutional rights. The officer's actions complied with the standards for a constitutionally permissible investigatory stop. What he violated was a statutory limitation upon his authority to act. Refusal to suppress the evidence does not condone conduct by officers that exceed their authority or jurisdiction. Adequate sanctions exist other than the exclusion of evidence to deter such conduct, including potential civil liability and criminal prosecution. The officer's actions met constitutional standards, though he acted outside his jurisdiction.

Consequently, the evidence will not be suppressed under the exclusionary rule.

If the argument be made that the officer is not a police officer when he acts outside his jurisdiction, the same result denying suppression would follow, though the analysis would be different if he were treated as a private person.